TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 417.

THE UNITED STATES, APPELLANTS,

vs.

LOUIS F. KOESTER.

APPEAL FROM THE COURT OF CLAIMS.

FILED DECEMBER 17, 1870.

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SUPREME COURT OF THE UNITED STATES.

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1 *Petition.*

United States Court of Claims.

LOUIS F. KOESTER
vs.
THE UNITED STATES. } 2601.

To the honorable the United States Court of Claims:

The petition of Louis F. Koester, a citizen and resident of Charleston, State of South Carolina, showeth: That, in the month of March, A. D. 1865, your petitioner was the owner and in possession of one hundred and seven bales of upland cotton, weighing forty-six thousand five hundred and ninety-four pounds; also sixteen bales of Sea Island cotton, weighing 6,074 pounds, all of which was then stored in the city of Charleston.

That, in the month of March, A. D. 1865, after the occupation of said city by the United States forces, your petitioner, as he was ordered by the proper authorities, reported the same as his property and in his possession; and afterwards, to wit, in the same month of March, all of said cotton was seized and taken possession of by Capt. S. H. Sturtevant, acting, as your petitioner is informed and believes, under the order of the Treasury Department, but without the consent of your petitioner and against his will; and that no part of said cotton or its proceeds was in any way appropriated to the use of the Army or Navy of the United States, but that said cotton was turned over by the officer seizing it to an agent of the Treasury Department, by whom it was sold, and the nett proceeds thereof paid into the Treasury of the United States.

2 Your petitioner avers that he is unable to state the precise amount for which said cotton was sold, or the expenses attending the seizure, shipment, transportation, and sale, but he states, on information and belief, that the said cotton was sold by the agent of the Treasury Department, as follows, to wit: The upland cotton for fifty-five (55) cents per pound, the aggregate of which was twenty-five thousand six hundred and twenty-six dollars and seventy cents, ($25,626 70,) and the Sea Island for one dollar per pound, the aggregate of which was six thousand and seventy-four dollars, ($6,074 00,) making a total aggregate of sales of thirty-one thousand seven hundred dollars and seventy cents, ($31,700 70,) and the expenses thereof did not exceed five per cent., and the net proceeds thereof which have been paid into the Treasury amount to thirty thousand one hundred and fifteen dollars and sixty-six cents, ($30,115 66.)

Your petitioner further shows that his cotton has never been abandoned or forfeited, or become liable to confiscation under any of the acts of Congress, in that behalf made and provided; and that it was not liable to seizure or capture under the laws of nations or under the laws and usages of war; that no proceedings for the purpose of condemning said cotton have ever been instituted in any court or before any tribunal.

Your petitioner avers that his property having been taken possession of by the United States Government, and appropriated by it, an implied contract has arisen to make your petitioner just compensation therefor, by paying him all said cotton was reasonably worth at the time and place it was so taken from him as aforesaid.

And your petitioner shows that said cotton, at the time of its seizure,

was worth thirty-one thousand seven hundred dollars and seventy cents, ($31,700 70,) which amount he is entitled to recover from the United States under the implied contract as above.

Your petitioner further shows that if there has been a valid and lawful capture of said cotton, which he understands is asserted by the United States, he is, nevertheless, entitled to receive the nett proceeds of it, amounting to thirty thousand one hundred and fifteen dollars, sixty-six cents, ($30,115 66,) under the provisions of the act of Congress, approved March 12, A. D. 1863, entitled "An act to pro-
3 vide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts within the United States."

Your petitioner further shows that he has never voluntarily aided, abetted, or given encouragement to rebellion against the Government of the United States.

L. F. KOESTER.

Louis F. Koester, being duly sworn, deposeth and saith that he is the claimant named in the foregoing petition, and that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made; that he is justly entitled to the amount therein claimed from the United States, after allowing all just claims and offsets; and that he believes the facts stated in the petition are true.

L. F. KOESTER.

Sworn and subscribed before me this 18th day of January, A. D. 1867.

W'M GURNEY,
Comm'r Court of Claims.

P. O. address of claimant, Charleston, S. C.
do. do. counsel, D. N. Cooley, Washington, D. C.

4 In the United States Court of Claims, December term, A. D. 1867.

LOUIS F. KOESTER
vs.
THE UNITED STATES. } No. 2601.

And the said defendants, by their solicitor, come and make answer to the petition of the claimant herein, and, not confessing the same, or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the said United States are indebted to the said claimant in the sum of $30,115 66, the said defendants say that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the said defendants deny the said allegation.

JOHN J. WEED,
Assistant Solicitor for U. S.

LOUIS F. KOESTER
vs.
THE UNITED STATES. } No. 2601—Dec. term, 1868.

And for a further plea to the said petition, the said defendants say that the said claimant ought not to have or maintain his aforesaid action against the said defendants, because they say that the said claimant did not, "within two years after the suppression of the late rebellion, prefer his claim to the proceeds" of the property mentioned and described, in the Court of Claims, as provided by the 3d section of the act of Congress, approved March 12, 1863, and entitled "An act to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts within the United States."

T. LYLE DICKEY,
Assistant Attorney General.

And for a further plea to the said petition, the said defendants say that the said claimant ought not to have or maintain his aforesaid action against the said defendants, because they say that the said claimant, at the time of the filing of his said petition, was an alien, and that the said seizure and taking possession of the said property named in the said petition, and the said several acts and doings of the defendants, their officers, servants, and agents therein set forth, were made and done in the administration of, and in virtue and under color of, the act of Congress, entitled "An act to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts within the United States," approved Mar. 12, 1863.

Whereby and by virtue of the provisions of the act of Congress entitled "An act regulating judicial proceedings in certain cases for the protection of officers and agents of the Government, and for the better defence of the Treasury against unlawful claims," approved July 27, 1868, the claimant is barred of his said action against the defendants.

T. LYLE DICKEY,
Assistant Attorney General.

5 United States Court of Claims.

LOUIS F. KEOSTER
vs.
THE UNITED STATES. } No. 2601.

Replication.—Filed Jan'y 13, 1869.

1. And now comes the claimant, by his solicitors, and for replication to the first plea of the defendant, herein pleaded, says: That he denies that the said claimant did not, within two years after the suppression of the rebellion, prefer his claim to the proceeds of the property mentioned and described in said petition, in the Court of Claims, as provided by the 3d section of the act of Congress, approved March 12, 1863, entitled "An act to provide for the collection of abandoned property," &c., as alleged in the said defendant's plea. And this he prays may be inquired of by the court.

Wherefore the said claimant prays judgment.

COOLEY & CLARKE,
Sol's for Claimant.

6 2. And for replication to the second plea of the said defendant, herein pleaded, this claimant says: That he denies that the said claimant, at the time of filing his said petition herein, was an alien, or that the said seizure and taking possession of the said property named in said petition, and the said several acts and doings of the defendants, their officers, servants, and agents, therein set forth, were made and done in the administration of, and in virtue and under color of, the act of Congress entitled

as alleged in the said plea. And this he prays may be enquired of by the court.

COOLEY & CLARKE.
Sol's for Claimant.

7 In the Court of Claims.

LOUIS F. KOESTER
vs. } 2601.
THE UNITED STATES.

And now, to wit, 25th of April, A. D. 1870, the court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said Louis F. Koester, have and recover of and from the United States the sum of sixteen thousand & twenty-five dollars ninety-four cents, ($16,025 94.)

By the court:
A true copy of record.

8 In the Court of Claims, Dec. term, 1869.

LOUIS F. KOESTER
vs. } 2601.
THE UNITED STATES.

To the Court of Claims:

The defendants hereby make application for the allowance of an appeal to the Supreme Court of the United States from the judgment rendered in this action on the 25th April, 1870, in favor of the claimant, for the sum of $16,025 94.

May 26, 1870.

ROB'T S. HALE,
Special Counsel of Treasury Dep't.
THOMAS H. TALBOT,
Ass't Att'y Gen'l.

Filed in clerk's office, May 27, 1870.

AT CHAMBERS, 2*d June*, 1870.

Ordered, That the appeal prayed in the case of Louis F. Koester vs. The United States, be allowed.

JOSEPH CASEY,
Ch. Justice.

9. In the United States Court of Claims.

LOUIS F. KOESTER
vs.
THE UNITED STATES. } No. 2601.

The finding of facts and the conclusions of law on said facts on which the court founded its judgment.

This cause coming on to be heard the 25th day of April, 1870, before all of the judges of the Court of Claims, the said court finds as matters of fact—

1st. That the petitioner was in March, 1855, a naturalized citizen of the United States, and resident in Charleston, where he kept a shop.

2nd. That he owned and was possessed of one hundred and fifteen bales of upland cotton, and three bales of Sea Island cotton, which were captured and taken from his possession by the United States and sold, and the net proceeds thereof amounting $16,025 94, paid into the Treasury.

10 3rd. That he was sought for, to be put into the army of the confederates; that to avoid this and being sent into the field, he procured, by paying largely, an appointment in the arsenal, and served there in making cartridges. That while there he received little or no pay; attended there as little as he could, and left it as soon as he could, and he would have had to go into the confederate army if he had not gone into the arsenal.

4th. That the claimant from the time of his naturalization, had at all times borne true allegiance to the Government of the United States, and had not in any way, at any time, voluntarily aided or abetted or given encouragement to rebellion against said Government.

That the petitioner is entitled to recover against the United States the said net proceeds of said one hundred and eighteen bales of cotton, amounting to the sum of sixteen thousand and twenty-five dollars and ninety-four cents, for which judgment is to be entered by the court.

11 The defendants proposed the following finding, which was disallowed by the court:

The claimant voluntarily and without any actual compulsion, engaged in the service of the confederate government, in the manufacture of ammunition for the use of the rebellion, at the confederate arsenal in Charleston, S. C.

(Indorsed:) 2601. Louis F. Koester vs. The United States.

12 In the Court of Claims.

LOUIS F. KOESTER
vs.
THE UNITED STATES. } No. 2601.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the counsel for the defendants, for the allowance of

an appeal, as filed in the clerk's office May 27, 1870, and of the order of Chief Justice Casey, allowing the same; of the finding of facts and the conclusions of law on said facts, on which the court founded its judgment; of the requested finding by the defendants, which was refused by the court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Washington, this 17th day of December, 1870.

[SEAL.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 417. The United States, appellants, vs. Louis F. Koester. Court of Claims. Filed 17th December, 1870.